U.S. Department of Labor

Board of Alien Labor Certification Appeals
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BALCA Case No. 2001-INA-147
ETA Case No. P1998-CA-09485833

In the Matter of:

SUAD S. RAYYIS,
Employer

on behalf of:

IRINA GEVORKIAN,
Alien

Appearance: Alan R. Chappell, Esquire
Law Office of Helphand & Rich
Glendale, CA

Certifying Officer: Martin Rios
San Francisco, CA

Before: Holmes, Vittone, and Wood
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of Irina Gevorkian ("Alien") filed by Suad S. Rayyis ("Employer") pursuant to §212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Office ("CO") of the United States Department of Labor, San Francisco, California, denied the application, and the Employer requested review pursuant to 20 C.F.R. §656.26.

Under §212(a)(5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary") has determined and certified to the Secretary of State and Attorney General that: 1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of the application and at the place where the alien is to perform such labor; and 2) the

employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in the Appeal File ("AF"), and any written arguments of the parties. 20 C.F.R. §656.27(c).

Statement of the Case

On April 4, 1997, the Employer, Suad S. Rayyis, filed an application for labor certification to enable the Alien, Irina Gevorkian, to fill the position of Medical Assistant (AF 44). The job duties for the position, as stated on the application, were as follows:

> Her duties are to assist the doctor, translate from Armenian and Russian to English and perform computerized tests such as E.C.GS (sic), E. M. GS (sic), Pulmonary Functions (sic) tests and neurometries.

(AF 44).

The stated job requirements for the position, as set forth on the application, were as follows: 11 years of high school education; 6 years at University; a College Degree in Medicine with the major field of study in "PHILOSOPHY DOCTOR (CARDIOLOGIST);" 1 year of training as a "GENERAL PHYSICIAN/NEUROLOGIST;" and, 23 years of experience in the job offered or in the related occupation of "DOCTOR/ NEUROLOGIST GENERAL PHYSICIAN CARDIOLOGIST" (AF 44).

In a Notice of Findings ("NOF") issued on September 12, 2000, the CO proposed to deny certification on various grounds (AF 41-43). Following the Employer's timely filing of a rebuttal on or about October 12, 2000 (AF 20-35), the CO issued a second NOF, dated January 5, 2001, in which he proposed to deny certification on the following bases: 1) Employer failed to establish an existing business and/or an existing job opening truly available to U.S. workers; and, 2) the combined education and experience requirements are excessive and unduly restrictive. On or about March 15, 2001, the Employer submitted its rebuttal to the second NOF together with an Amended ETA 750 which, interalia, changed the job title to "medical assistant/medical translator" and reduced the experience requirement to 2 years. (AF 8-15). The CO found the rebuttal unpersuasive and issued a Final Determination, dated June 13, 2001, denying certification on the same bases (AF 6-7). On or about July 17, 2001, the Employer appealed the Final Determination

(AF 1-5). Subsequently, the CO forwarded this matter to the Board of Alien Labor Certification Appeals.

Discussion

In the Final Determination, the CO set forth the following rationale for denying certification regarding the unduly restrictive requirements issue:

> The employer submitted a one sided ETA 750A form, in which all of the educational requirements are omitted and a new job title has been added with additional job requirements. The corrective action stated that the employer must either justify or delete the restrictive requirements by submitting an amendment, in duplicate, both copies signed by the employer. The employer did not clearly delete the restrictive requirements as directed in the corrective action of the Notice of Findings. Submitting a new form for a new position was not an option. Therefore, the employer remains in violation of 20 CFR 656.

(AF 7).

Our review of the Appeal File reveals that the Employer somewhat changed the job title from "MEDICAL ASSISTANT" to "MEDICAL ASSISTANT/MEDICAL TRANSLATOR" (*Compare* AF 44; AF 12). Furthermore, the duties for the position were slightly changed to the following:

> Assist doctor in medical translations by translating Russian and Armenia patients complaints and symptoms (sic) to the Doctor in English, including the history of the disease, on computerized tests including EKG, pulmonary function, nerve conduction studies, EMG, actuarily and venus (sic) dopler (sic) and 24 hour EKG halter monitoring (sic).

(AF 12, Item 13; *Compare* AF 44, Item 13).

We find that the record contains at least one signed copy of the (new/amended) Application for Alien Employment Certification form (AF 13). Furthermore, we find that the Employer's obvious intent was to delete the restrictive requirements by no longer requiring any education or training requirements, and modifying the experience requirement from 23 years to only 2 years in the job offered (AF 12, Item 14; s*ee* also, AF 9; compare AF 44, Item 14). Therefore, if this had been the only basis for the CO's denial of certification, we would have remanded the case for technical corrections by the Employer and recruitment. However, the CO also denied certification on the grounds that the Employer had failed to establish that a bona fide job opening truly exists. Accordingly, we must also address this issue herein.

In the second NOF, dated January 15, 2001, the CO stated, in pertinent part:

I. Non-Existent Business or Non-Existent Job opening

There is question whether a current job opening exists to which U.S. workers can be referred, or whether there is a current existing business operated by the employer. According to 20 CFR 656.3, the term "Employer" means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment and which proposes to employ a full-time worker at a place within the United States.

In seeking labor certification, the employer must offer a job that is truly open to U.S. workers. 20 CFR 656.20(c)(8).

In this instance, the petitioning employer has submitted documentation in response to the Notice of Findings, dated September 12, 2000, in which the employer was asked to submit evidence of a current Federal tax identification number. California business records show that the tax identification number submitted by the employer is for Brand Medical Group. Dr. Rayyis states that he is currently practicing under the business name of Brand Medical Group, however, the Brand Medical Group business records do not show Dr. Rayyis as an owner/partner of the business. According to available public business records the listed Chief Financial Officer is Gohar Barsegian and Edward V. Azizian is the President of the Company. It appears that Brand Medical Group does not have any apparent relationship to Dr. Rayyis.

There is no evidence of the alien working for Brand Medical Group, however, the application is submitted with restrictive requirements. Thus there is an appearance that the job is being created for the alien.

CORRECTIVE ACTION:

Submit a copy of the company's business license.

Show if the firm is a corporation, partnership or sole proprietorship. Provide documentation including the articles of incorporation if incorporated, or partnership information.

Provide evidence of the relationship between the company and the petitioning employer. Provide evidence that Dr. Saud S. Rayyis is an owner, or officer with authority to hire a worker for Brand Medical Group.

Submit articles of incorporation, listing the names and titles of all corporate officers, and the alien's relation to same. If the corporation is owned by another corporation show whether the alien has any ownership interest in that corporation,

the extent of that ownership, and whether the alien is related to any owners of the parent corporation.

Show the relationship between the alien and all owners, officers and partners.

Show alien's ownership interest, including percentage of stock owned and the value of the alien's ownership in the firm compared to the total value of the firm. Show any relationship the alien has with other owners of the firm. Show the alien's authority to hire/fire employees and the scope of this authority.

If the alien owns part or all of the firm, or is related to any owner, show how the job offer is clearly open to a U.S. worker. In addition, show how the person who makes the hiring decision for the position in question is completely independent of the alien and the alien's influence.

(AF 37-38).

In response to the foregoing, the Employer submitted an explanatory letter, dated March 15, 2001 (AF 8-9), the new/amended ETA 750A form (AF 10-13) and a "Certificate of Use and Occupancy" form (AF 14).

In the explanatory letter, dated March 15, 2001, the Employer stated, in pertinent part:

Please find enclosed a copy of the Business License pursuant to your request.

Please be advised that in April of 1995, I began practicing medicine in my current office as well as another office located at 1140 N. Brand Blvd., Glendale, California, under the business name of Brand Boulevard Health Center. The Fictitious Business Name Statement filings were done by Gohar Barsegian and Edward Azizian. Neither of these individuals are doctors and I have been the sole physician running the practice. On approximately January, 1996 Edward Azizian left the office and opened his office under a different name. He has no continuing relationship since that time with Brand Boulevard Health Center. Ms. Barsegian is still functioning as an Office Manager. As the only physician, I currently run the business and make all decisions in regards to hiring and firing personnel. I currently see approximately 60 patients a day in what is one of the fastest growing medical offices in the Glendale area.

The alien, Irina Gevorkian, has no ownership interest in the business whatsoever. I am currently in the process of incorporating the medical office as a professional corporation and I will be listed a the President of the corporation. My attorney handling the incorporation is name Mr. Richard Moss and he informs me that the incorporation should be complete within approximately 1 to 2 weeks. I will be the

sole shareholder of the corporation.

(AF 8-9).

In the Final Determination, the CO stated, in pertinent part:

> The employer's rebuttal dated March 15, 2001 states that Dr. Rayyis is doing business under the business name of Brand Boulevard Health Center. The corrective action requested the employer to submit a copy of the business license for Brand Medical Group. However, the document submitted by the employer is a Certificate of Use and Occupancy and shows that Gohar Barsegian is the General Manager. The employer states that he was in the process of incorporating the medical office, however, the employer failed to provide persuasive documentation showing that Dr. Rayyis has a current business license, or that a bonafide job opening truly exists. Therefore, the employer is in noncompliance with the corrective action requirements as indicated in the Notice.

(AF 7).

Based upon our review of the Appeal File, we fully agree with the CO's determination that the Employer's rebuttal "documentation" is inadequate and fails to comply with the NOF. We have long held that an employer must provide directly relevant and reasonably obtainable documentation sought by the CO. Gencorp, 1987-INA-659 (Jan. 13, 1988)(en banc). In the present case, as outlined above, the CO made a reasonable request for the Employer to submit a copy of the company's business license, as well as documentation, such as the articles of incorporation (AF 38). Instead, the Employer provided a Certificate of Use and Occupancy form, dated April 17, 1996, which listed the "Named Business" as "Brand Medical Group, Inc." and the "Named Applicant" as "Gohar Barsegian, General Manager." Furthermore, the "Street Address" set forth therein is not the same as that which is listed on the ETA 750A form (AF 14; *Compare* AF 44, 10). In addition, the Employer did not submit Articles of Incorporation for the existing corporation of Brand Medical Group, Inc., under whose name the Employer had claimed to be "currently practicing" (AF 22); instead, the Employer asserted that he was in the process of setting up a new corporation (AF 8-9).

In summary, we find that Suad S. Rayyis has failed to establish that he is an "Employer" as defined in 20 C.F.R. §656.3; and, that he has also failed to document that there is a bona fide job opportunity which is clearly open to qualified U.S. workers, in violation of §656.20(c)(8). Accordingly, we agree with the CO's determination and conclude that labor certification was properly denied.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

For the Panel:

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JOHN C. HOLMES
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.